IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW MEXICO

RAY BROWN and
KENJI AUSBORN,

Plaintiffs,

vs. NO. CV 10-81 JB/ACT

DANIEL MONTOYA, DANIEL DOUGHERTY,
SUSAN BARELA, TROY RUPLINGER,
LIZ AGUILAR, MANUEL GONZALES III,
in their individual capacities,
DAN HOUSTON, in his official capacity as
BERNALILLO COUNTY SHERIFF,
GREGG MARCANTEL, in his official capacity as
SECRETARY OF CORRECTIONS,
GORDON E. EDEN, JR., in his official capacity as
SECRETARY OF THE DEPARTMENT OF
PUBLIC SAFETY, and
JOHN DOES 1-50,

Defendants.

PLAINTIFFS' MOTION TO COMPEL ANSWERS AND RESPONSES TO PLAINTIFFS' FIRST SETS OF REQUESTS FOR ADMISSION, INTERROGATORIES, AND REQUESTS FOR PRODUCTION TO DEFENDANTS MONTOYA, BARELA, HOUSTON, MARCANTEL, AND EDEN

Plaintiffs Ray Brown and Kenji Ausborn, through their attorney of record, Arne R. Leonard, hereby move to compel answers and responses to Plaintiffs' First Sets of Requests for Admission, Interrogatories, and Requests for Production to Defendants Daniel Montoya, Susan Barela, Dan Houston, Gregg Marcantel, and Gordon E. Eden, Jr. pursuant to Fed. R. Civ. P. 37 and D.N.M. LR-Civ. 37.[1] As grounds for this motion, Plaintiffs state the following.

[1]Pursuant to D.N.M. LR-Civ. 37.1, the interrogatories, requests for production, requests for admission which are the subject of this motion, along with the responses or objections thereto, are attached hereto as Exhibits 1, 2, 3, 4, and 5. Pursuant to D.N.M. LR-Civ. 10.5, the parties have agreed to extend the page limits for exhibits to this motion beyond 50 pages.

I. BACKGROUND AND CERTIFICATION PURSUANT TO FED R. CIV. P. 37

This case brings to light a significant structural defect in the State of New Mexico's regulatory framework for classifying individuals as "sex offenders" for purposes of imposing registration requirements as well as conditions of probation and parole upon them. In the course of deciding the interlocutory appeal which allowed Plaintiffs' claims in this case to proceed to discovery, the United States Court of Appeals for the Tenth Circuit joined other courts in holding that individuals have a clearly established right under the Due Process Clause to receive timely notice and a fair opportunity to be heard before their constitutionally protected liberty interests are infringed by a sex-offender classification. *See Brown v. Montoya*, 662 F.3d 1152, 1166-71 (10th Cir. 2011). In cases where the sex-offender classification is premised entirely on facts already admitted in a guilty plea or proven beyond a reasonable doubt at trial because they are essential elements of a criminal offense for which the individual was duly convicted, this requirement of due process is satisfied by the prior criminal proceeding itself. *See Ct. Dep't of Pub. Safety v. Doe*, 538 U.S. 1, 7 (2003). But when, as in this case, the government imposes a sex-offender classification based on facts which go beyond the essential elements of a criminal offense for which the individual was convicted, the government cannot rely on the conviction alone to bypass the constitutional requirement of timely notice and a fair opportunity to be heard. *See Brown*, 662 F.3d at 1166-71.

This systemic defect in New Mexico's sex-offender classification scheme arises because that scheme seeks to classify false imprisonment and kidnapping as "sex offenses" based on facts which are not among the essential elements required to convict a person of those offenses, namely, whether the crime was committed against a minor under the age of 18. Instead of submitting their factual contentions regarding the age of a kidnapping or false-imprisonment victim to a court of competent jurisdiction for a determination of that issue subject to the procedural protections of the Due Process Clause and state law, Defendants' employees are unilaterally making that determination on their own without affording the affected individual timely notice or a fair opportunity to be heard. In the case of Plaintiff Ray Brown, Defendants persist in their unilateral decision to classify him as a sex-offender even after he has gone to state court and obtained a ruling that he is *not* a sex offender. Plaintiffs seek to remedy this procedural due-process violation inherent in New Mexico's sex-offender classification scheme through prospective declaratory and injunctive relief, as well as an award of damages in the case of Plaintiff Ray Brown.

Standing in the way of these remedies are Defendants and their counsel, who vigorously object to every step that Plaintiffs take to move their case forward and obtain their day in court. This case was filed on February 1, 2010. When it finally proceeded to a Rule 16 scheduling conference on July 30, 2012, Plaintiffs' counsel served Defendants' counsel with Plaintiffs' First Sets of Requests for Admission, Interrogatories, and Requests for Production. (Doc. 95.) On August 30, 2012, the parties' counsel exchanged email correspondence in which Plaintiffs and the State Defendants (Montoya, Barela, Marcantel, and Eden) agreed to extend the time for these Defendants to respond to Plaintiffs' first set of discovery requests until September 7, 2012. The next day, counsel exchanged further emails in which counsel for the County Defendant (Dan Houston) produced the answers, responses, and objections attached hereto as Exhibit 1 and stated that records cited in that document would be produced in the future.[2]

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[2]In the interest of brevity, the email messages summarized above are not attached as exhibits to this motion but can be provided to the Court should a dispute arise as to their content.

On September 7, 2012, the State Defendants' counsel hand-delivered the answers, responses, and objections of Defendants Montoya, Barela, Marcantel, and Eden to Plaintiffs' first set of discovery requests. Copies of these documents are attached hereto as Exhibits 2, 3, 4, and 5. Also on September 7, 2012, counsel for the County Defendants completed production of the documents (Bates No. 000008-000013) that Defendant Houston promised to produce in response to Plaintiff's first set of discovery requests. An earlier version of those documents was produced on September 5, 2012.

Counsel have conferred in good-faith regarding Defendants' objections to Plaintiffs' first sets of discovery requests. In addition to their email correspondence, counsels' efforts are documented in the letter attached hereto as Exhibit 6. While counsel for Plaintiffs and counsel for the State Defendants (Montoya, Barela, Marcantel, and Eden) were not able to reach agreement on the underlying question of whether the requested information is discoverable, they did reach an agreement not to seek discovery sanctions against one another in their respective motions to compel further answers and responses to one another's first sets of discovery requests. Apart from that stipulation, Plaintiffs' counsel certifies that the parties are unable to agree on a resolution of Defendants' objections to Plaintiffs' first sets of discovery requests within the time frame contemplated by D.N.M. LR-Civ. 26.6. Nevertheless, Plaintiffs' counsel will continue such efforts after this motion is filed.

II. ARGUMENT

A. Timeliness of Plaintiffs' Motion

The County Defendants' counsel has indicated in her email correspondence with Plaintiffs' counsel that she believes the period for informal resolution of discovery disputes under Local Rule 26.6 has already passed and has declined to agree to an extension of time.

Plaintiffs' counsel takes the position that the 21-day deadline specified in that rule runs from the date when Defendants completed production of the documents promised in their response (September 7, 2012). Under that interpretation, this motion is timely filed.

Should the Court adopt a different interpretation, Plaintiffs' counsel moves the Court to extend the 21-day deadline for good cause. Allowing Plaintiffs to bring a single, consolidated motion addressing all Defendants' objections is more efficacious than proceeding *seriatim* with a series of repetitive piecemeal motions presenting separate argument as to each Defendants' objections. Extending the deadline until the 21 days has elapsed as to each Defendant also affords the parties' counsel additional opportunity to confer with one another and attempt to resolve their differences informally. To encourage these practices and advance the underlying purposes stated in Fed. R. Civ. P. 1, the Court should deem this motion timely filed.

B. Summary of Defendants' Objections

The objections which are the subject of this motion are identified in the table below:

Defendant/Exhibit	**RFA No.**	**Interrogatory No.**	**RFP No.**
Houston (Ex. 1)	1, 2, 3, 4	6	1, 6
Eden (Ex. 2)	1, 2	4, 5	1, 2, 3, 4, 5, 6
Marcantel (Ex. 3)	1, 2	2, 3, 4, 5	1, 2, 3
Barela (Ex. 4)	2	2, 4	1
Montoya (Ex. 5)		4	

For purposes of this motion, Plaintiffs' counsel has organized the discussion of Defendants' objections to Plaintiffs' first sets of discovery requests into the three categories set forth below under headings C, D, and E. The specific discovery requests which fall under each category are listed and underlined within the discussion of each category.

C. Defendants' Use of Conclusory Blanket Objections

A generic, boilerplate objection that fails to provide any responsive information or to include a specific explanation of why the interrogatory or request is objectionable will not suffice to withstand a motion to compel and is instead treated as if no objection had been lodged at all. *See DL v. District of Columbia*, 251 F.R.D. 38, 43 (D.D.C. 2008). Fed. R. Civ. P. 33(b) and 34(b)(2)(C) also require that a party responding to an interrogatory or request for production that is objectionable in part nevertheless "has a duty to answer 'to the extent the interrogatory is not objectionable.'" *Hiskett v. Wal-Mart Stores, Inc.*, 180 F.R.D. 403, 405 (D. Kan. 1998) (quoting Fed. R. Civ. P. 33(b)); *accord Brenford Envt'l System, L.P. v. Pipeliners of Puerto Rico, Inc.*, 269 F.R.D. 143, 146-47 (D. Puerto Rico 2010) (citing Fed. R. Civ. P. 34(b)(2)(C)); *Martinez v. Cornell Corrections of Texas*, 229 F.R.D. 215, 218-19 (D.N.M. 2005).

In this case, Plaintiffs assert that the following objections to Plaintiffs' first set of discovery requests should be overruled because they do not comply with the authorities cited above:

1. Defendant Houston's objections to Plaintiff's Interrogatory No. 6 and Requests for Production No. 1 and 6. These objections contain no explanation or authority to support the contention that Plaintiff's discovery requests are unduly burdensome, overbroad and harassing, especially given that Defendant Houston is a public official subject to the requirements of New Mexico's Inspection of Public Records Act, and one of the express purposes of New Mexico's Sex Offender Registration and Notification Act (NMSORNA) is to provide "public access to information regarding certain registered sex offenders" and remove impairments arising from the "lack of information." NMSA 1978, § 29-11A-2. Similarly, Defendant Houston's objections contain no explanation or authority to support the contention that Plaintiff's discovery requests

seek information that is not relevant, nor discoverable, nor reasonably calculated to lead to the discovery of admissible evidence. If parties could avoid responding to discovery requests based solely on a conclusory assertion that the information requested is "not discoverable" or "not at issue," then the whole purpose of the discovery rules would be subverted, and discovery requests would be a pointless exercise in futility.[3]

2. Defendant Eden's objection to Interrogatory No. 5. This objection provides an example of using a boilerplate objection to avoid responding to a discovery request even where it is admitted that part of the request is not objectionable. Defendant Eden only states an objection to providing information about individuals *other than* Plaintiffs who were classified as "sex offenders," but he does not provide a complete answer to the question as to Plaintiffs themselves. If Regina Chacon was the person who determined that Plaintiffs needed to serve probation in the sex offender unit, then Defendant Eden failed to state any grounds why he did not answer the rest of this interrogatory as to her by describing her principal and material duties with respect to sex-offender registration, identifying the time period during which she was assigned those duties, and identifying any other employees assigned to supervise her during that period.

3. Defendant Eden's objections to Requests for Production No. 1, 2, 3, 4, and 6. These objections contain conclusory references to "proprietary NCIC documents referring to Plaintiffs that [Defendant Eden] has no authority to produce." Simply denying that one has authority to produce a document, without identifying the authority on which one relies, does not suffice to meet Rule 34(b)(2)(B)'s requirement of "including the reasons" for each objection stated. *See*

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[3]To the extent Defendant Houston's conclusory objections are intended to allude to the language of Fed. R. Civ. P. 26(b)(1) restricting the parties to "discovery regarding any nonprivileged matter that is relevant to any party's claim or defense," such allusions are addressed in Plaintiffs' discussion of the second category of objections below.

Brenford Environmental Systems, 269 F.R.D. at 146-47 (collecting cases). In order for Plaintiffs' counsel and the Court to evaluate whether there is a valid basis for failing to produce a particular category of documents, it is necessary for Defendant Eden's counsel to identify the specific legal grounds for asserting that he lacks authority to produce them, and also to identify to the best of his knowledge who is authorized to produce them. A log listing the specific documents that are being withheld under this assertion of lack of authority would also be helpful in resolving Defendant Eden's objection. *See* Fed. R. Civ. P. 26(b)(5) (stating that a party claiming a privilege must provide sufficient information to enable the Court and opposing counsel to assess the applicability of the privilege).

D. Defendants' Refusal to Provide Information about Non-Parties (Similar Incidents and Organizational Structure)

Many of Defendants' objections to Plaintiffs' first sets of discovery requests contend that Defendants are not required to provide any information about sex-offender classifications of other individuals besides the two Plaintiffs in this case. Defendants also contend that they are not required to provide any information about other government employees or agents (such as supervisors, trainers, or policymakers) who are not named as Defendants in this case. The following objections fall into this category of denying access to information about non-parties:

1. Defendant Marcantel's objections to Interrogatories No. 2, 3, 4, and 5, and Request for Production No. 1, 2, and 3;

2. Defendant Houston's objections to Interrogatory No. 6 and Requests for Production No. 1 and 6 (which also state blanket objections previously discussed under the first category listed above);

3. Defendant Eden's objection to Interrogatory No. 5 (which also fails to answer as to the portions of the interrogatory which are not objectionable, as previously discussed under the first category listed above), and his objections to Interrogatory No. 6, Request for Production No. 1 and 5;

4. Defendant Barela's objection to Plaintiff's Request for Admission No. 2, Interrogatory No. 2 and 4, and Request for Production No. 1;

5. Defendant Montoya's objection to Plaintiff's Interrogatory No. 4; and

All of the objections listed above appear to be founded on a narrow misreading of the Advisory Committee comments to the 2000 Amendment to Fed. R. Civ. P. 26(b)(1). These committee comments explain the reasons for changing the scope of party-controlled discovery from matters relevant to the "subject matter" of the litigation under the old rule to matters relevant to "any party's claim or defense" under the current rule. Defendants appear to read the phrase, "any nonprivileged matter that is relevant to any party's claim or defense," as limiting discovery to information about the actual parties to the litigation only.

Defendants' interpretation of the scope of discovery under Fed. R. Civ. P. 26(b)(1) is mistaken for the following reasons. First, the Advisory Committee comments to the 2000 Amendment acknowledge that:

> The dividing line between information relevant to the claims and defenses and that relevant only to the subject matter of the action cannot be defined with precision. A variety of types of information not directly pertinent to the incident in suit could be relevant to the claims or defenses raised in a given action. For example, other incidents of the same type, or involving the same product, could be properly discoverable under the revised standard. Information about organizational arrangements or filing systems of a party could be discoverable if likely to yield or lead to the discovery of admissible information.

Plaintiffs' discovery requests in this case are similar (if not identical to) the examples provided in the above comment. If Defendants have information about other individuals with false imprisonment or second-degree kidnapping convictions who were classified as sex offenders for purposes of probation, parole, or SORNA registration during the relevant time period, then the classification of those individuals constitutes "incidents of the same type" or arising from the same policy. Similarly, information about the sources of the records on which such classifications were based, and who provided supervision, training, or instruction to Defendants and defense witnesses in this case, falls under the rubric of "organizational arrangements or filing systems of a party."

These topics are relevant to the parties' claims and defenses in this case, because one of the main defenses each Defendant has asserted here is that someone else (another Defendant or third party) is responsible for making the decision to classify Plaintiffs as sex offenders. For example, the persistent theme in Defendant Houston's answers and responses is that the County Defendants do not decide who gets classified as a sex offender but only act on instructions from other agencies or from offenders themselves. *See* Defendant Houston's Answers to Request for Admission No. 5, Interrogatory No. 2, 3, 4, and 5, and Request for Production No. 4 and 5. The Corrections Department Defendants (Marcantel, Barela, and Montoya) in turn claim that they merely refer offenders to the County so the County can make the sex-offender classification at issue here, or rely on the Department of Public Safety to make the classification for them, even though the Department of Public Safety's statutory authority extends to administering NMSORNA, not determining conditions of probation or parole. *See* Defendant Marcantel's Answers to Request for Admission No. 3 and 4 and Interrogatory No. 4, and his Responses to Requests for Production No. 1 and 2; Defendant Montoya's Answers to Request for Admission

No. 1 and 2 and Interrogatory No. 2, 3, and 5, and his Responses to Request for Production No. 1 and 2; and Defendant Barela's Answers to Requests for Admission No. 1 and Interrogatory No. 2, 3, and her Response to Request for Production No. 2. The Secretary of the Department of Public Safety in turn states that his department relies on information provided by the Department of Corrections and Bernalillo County to determine who is classified as a sex offender. *See* Defendant Eden's Answers to Request for Admission No. 3 and 4.

Thus, Plaintiffs in this case are faced with the classic bureaucratic conundrum of "passing the buck," about which critics of bad government have been complaining since before the day this country was founded. The hand of one Defendant points the finger at another Defendant, whose hand in turn points the finger at a third Defendant, whose hand then points back at the first Defendant. In order to unravel this conundrum and explore the basis for each Defendant's assertion of a defense pointing the finger elsewhere, it is only logical that Plaintiffs would seek discovery regarding the chain of command or organizational structure of the offices where each Defendant works, as well as any pattern or practice of similar incidents involving other individuals and agencies.

The same reasoning applies to Defendant asserted defenses of legislative and qualified immunity. In order to explore the basis for asserting that a Defendants' actions were legislative in nature, for example, it is only logical that Plaintiffs would want more information about exactly who drafted or revised the policies in question, and how they were implemented through supervision and training activities. Just because Defendants assert a defense does not automatically preclude Plaintiffs from using discovery to explore their basis for asserting it.

While it is true that Plaintiffs may use the results of the discovery they seek in order to propose amendments to their Complaint, such amendments are prompted by the defenses

Defendants have raised in this matter, which have already given rise to extensive briefing on a motion to dismiss and an interlocutory appeal. Where the asserted defense is that someone else is responsible for the alleged violation of Plaintiffs' rights, or that a particular Defendant is immune from liability for that violation, Plaintiffs seek to find out the basis for those asserted defenses so that the right persons can be named as parties in the Complaint. Conducting discovery and amending a complaint in response to defenses asserted in a motion or responsive pleading is an accepted practice that cannot be equated with the kind of aimless fishing expedition that the 2000 amendment to Rule 26(b)(2) is designed to prevent. *See EEOC v. Concentra Health Servs., Inc.*, 496 F.3d 773, 779-80 (7th Cir. 2007) (recognizing that "a plaintiff might sometimes have a right to relief without knowing every factual detail supporting its right; requiring the plaintiff to plead those unknown details before discovery would improperly deny the plaintiff the opportunity to prove its claim.").

Moreover, courts interpreting the scope of discovery under Rule 26(b)(1) have not adopted the narrow reading of the 2000 Amendment that Defendants' objections seem to embrace. "The change, while meaningful, is not dramatic, and broad discovery remains the norm." *Sanyo Laser Prods. Inc. v. Arista Records, Inc.*, 214 F.R.D. 496, 500 (S.D. Ind. 2003). Thus, "'counsel should be forewarned against taking an overly rigid view of the narrowed scope of discovery. While the pleadings will be important, it would be a mistake to argue that no fact may be discovered unless it directly correlates with a factual allegation in the complaint or answer.'" *Id.* at 502 (quoting *Thompson v. Dep't of Housing and Urban Development*, 199 F.R.D. 168, 172 (D. Md. 2001)); *see also Martinez*, 229 F.R.D. at 218-19.

In the *Sanyo* case, for example, the 2000 Amendment to Fed. R. Civ. P. 26(b)(2) did not preclude the district court from compelling discovery regarding other Sanyo affiliates that were named as "John Doe" defendants in the pleadings. *See Sanyo*, 214 F.R.D. at 501-02. Similarly, this Court compelled discovery on similar incidents of sexual misconduct involving third parties in a jail-rape case even when those incidents occurred after the incident giving rise to the plaintiff's lawsuit. *See Martinez*, 229 F.R.D. at 219-21.

Plaintiffs' reasons for seeking discovery about similar incidents pursuant to the same policies are even more compelling here, because Plaintiffs' complaint includes claims for prospective declaratory and injunctive relief, and Defendants have asserted defenses which raise the question whether the classifications of Plaintiffs at issue here are isolated incidents or part of a general and continuing custom, policy, or practice involving others. Additionally, as in *Sanyo*, Plaintiffs have named "John Doe" defendants in their pleadings and have a good-faith basis for seeking further information to enable those defendants to be identified with greater specificity in the pleadings. The importance of obtaining discovery to identify the actions of supervisory defendants takes on added significance in light of the pleading standards articulated in *Ashcroft v. Iqbal*, 556 U.S. 662, 129 S. Ct. 1937, 1949 (2007). The discovery rules should be interpreted in light of these emerging new pleading standards. When, as here, Plaintiffs have presented enough of a plausible claim to withstand a motion to dismiss and an interlocutory appeal on qualified immunity, there is good cause for allowing discovery that is reasonably calculated to flesh out the scope of that claim and identify the factual basis for supervisory liability.

Rather than becoming "'consumed with the philosophical exercise of debating the difference between discovery relevant to the "claims and defenses" as opposed to the "subject matter" of the pending action--the juridical equivalent to debating the number of angels that can dance on the head of a pin--the practical solution to implementing the new rule changes may be to focus more on whether the requested discovery makes sense in light of the Rule 26(b)(2) factors.'" *Sanyo*, 214 F.R.D. at 500 (quoting *Thompson*, 199 F.R.D. at 172). In this instance, the requested information is not unduly burdensome because it is directed at state officials who are already under a statutory duty to disclose public records under New Mexico's Inspection of Public Records Act, NMSA 1978, §§ 14-2-1 to 14-2-12, which declares the State's public policy of ensuring that "all persons are entitled to the greatest possible information regarding the affairs of the government and the official acts of public officers and employees," *id.* § 14-2-5.

How can it be unduly burdensome or oppressive to provide the information requested here, when New Mexico's legislature and courts have identified the advancement of this policy as "an essential function of representative government and an integral part of the routine duties of public officers and employees"? NMSA 1978, § 14-2-5. "Transparency is an essential feature of the relationship between the people and their government." *Republican Party of N.M. v. N.M. Taxation and Revenue Dep't*, 2012-NMSC-026, ¶ 51, ___ N.M. ___, 283 P.3d 853; *accord Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, 130 S. Ct. 876, 898 (2010). Thus, our "constitution ... is at its apex when the people have access to the information necessary to determine whether their elected officials are faithfully fulfilling their duties." *Republican Party*, 2012-NMSC-026, ¶ 52.

Ironically, New Mexico's Sex Offender Registration and Notification Act (NMSORNA), is a public-disclosure statute aimed at "providing public access to information regarding certain registered sex offenders" and removing impairments arising from the "lack of information." NMSA 1978, § 29-11A-2. Defendants have provided no compelling justification as to why Plaintiffs should be denied access to the information necessary to determine whether government officials are fulfilling their duties under this statute and its implementing regulations.

E. Defendants' Objections to Plaintiffs' Requests for Admissions

The third category of objections which permeate both the State and County Defendants' responses to Plaintiff's first sets of discovery requests are those which refuse to answer basic requests for admission directed at identifying Defendants' job duties on the grounds that these requests call for a legal conclusion. Objections which fall under this category include the following:

1. Defendant Houston's objection to Request for Admission No. 1, 2, 3, and 4;
2. Defendant Eden's objection to Request for Admission No. 1 and 2;
3. Defendant Marcantel's objection to Request for Admission No. 1 and 2;

Fed. R. Civ. P. 36 expressly states that a request for admission is not objectionable because it involves an opinion or contention that relates to a fact or the application of law to fact. *See Miller v. Holzmann*, 240 F.R.D. 1, 5 (D.D.C. 2006) (citing the 1970 Amendment to Fed. R. Civ. P. 36). Thus, "it is permissible to request an admission as to how a particular source of a legal obligation, such as a contract or a statute or regulation, applies to a given state of facts." *Id.* Asking an official to admit or deny whether certain responsibilities under a contract, statute, or regulation apply to him or her is a classic example of the proper use of requests for admission. *See, e.g., Sigmund v. Starwood Urban Retail VI, LLC*, 236 F.R.D. 43, 45-46 (D.D.C. 2006).

To the extent Defendants wish to qualify their admissions with the *caveat* that they are not stating any pure legal conclusions but only answering what responsibilities they in fact undertake in the course of their employment as public officials, that is fair enough. But they must still answer the question. "[T]o aid the quest for relevant information parties should not seek to evade disclosure by quibbling and objection. They should admit to the fullest extent possible, and explain in detail why other portions of a request may not be admitted." *Marchand* *v. Mercy Med. Ctr.*, 22 F.3d 933, 938 (9th Cir. 1994). Accordingly, Plaintiffs respectfully move the Court overrule the objections to all those requests for admissions for which Defendants refused to answer based on a contention that the request asks for a legal conclusion.

III. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court compel Defendants Houston, Eden, Marcantel, Montoya, and Barela to answer and respond in a complete, timely, and accurate manner to the specific discovery requests identified above. As stated in the letter to Defendants' counsel attached as Exhibit 6, Plaintiffs' goal in bringing this motion is to obtain the requested information in a timely manner. Plaintiffs' counsel does not wish to allow discovery motion practice to escalate to, or become a pretext for, attacks on the integrity or professionalism of opposing counsel, or threats of sanctions that are disproportionate to the task of compelling timely disclosures. Accordingly, Plaintiffs and the State Defendants have agreed not to seek discovery sanctions against one another in their respective motions to compel further answers and responses to one another's first sets of discovery requests. Plaintiffs therefore limit their request for attorney fees and costs under Fed. R. Civ. P. 37 to the portion of those fees and requests attributable to Defendant Houston. This motion does not seek fees and costs against the State Defendants under that rule.

Respectfully submitted,

/s/ Arne R. Leonard

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I hereby certify that a copy of the foregoing motion and attached exhibits were served via CM/ECF this 28th day of September, 2012, to the following counsel of record:

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